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January 22, 2014

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BY HAND

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6762 (Pridemore for Congress)

Dear Office of General Counsel:

This office represents Pridemore for Congress ("PFC") and Caleb Crosby in his official capacity as Treasurer in the above-captioned Matter Under Review ("MUR"). This letter and accompanying Affidavit of Sean Donnelly responds to the complaint by Derek Barr, campaign manager of Barr Congress, Inc., to the Federal Election Commission ("FEC" or "Commission") dated November 5, 2013 ("Complaint").¹

The Complaint alleges that PFC violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by soliciting a contribution from an individual named [redacted] who was listed on the Barr Congress, Inc.'s July Quarterly FEC Form 3 disclosure report as a fictitious or "salted" contributor. However, [redacted] is not fictitious, but an active contributor and supporter of PFC. Furthermore, the Complaint fails to otherwise allege a material violation of the Act. Accordingly, the Commission should find no reason to believe that PFC and its Treasurer violated the Act and should dismiss this matter.

FACTS

PFC is the principal campaign committee of Tricia Pridemore, a candidate in the Republican primary election for the 11th congressional district of Georgia. Donnelly Aff. ¶ 1. On or around June 12, 2013, PFC became acquainted with a politically engaged individual named [redacted] who developed into an active supporter of PFC and participant in Ms. Pridemore's campaign. Donnelly Aff. ¶¶ 17-19. On September 5, 2013, [redacted] contributed to PFC and made a second contribution

¹ On December 11, 2013, the Commission granted our request for an extension of time to respond to the Complaint until January 18, 2014. This response was filed Tuesday January 22 because January 18 was a Saturday, January 19 was a Sunday, January 20 was the Martin Luther King Jr. federal holiday, and the federal government was closed on January 21 due to inclement weather.

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on December 10. Donnelly Aff. ¶ 19. In addition, he and his wife were hosts of a December 15, 2013 birthday party for Ms. Pridemore that also served as a fundraising event for PFC. Donnelly Aff. ¶ 19.

After PFC's introduction to [redacted] and his September 5, 2013 contribution, PFC sent a mailing soliciting contributions to PFC on or around November 2, 2013, to approximately 1,000 people that cost \$984.15. Donnelly Aff. ¶ 13. The data used to generate the solicitation mailing list would have included [redacted] name and address based on his initial interactions with PFC and his September 5 contribution to PFC. Donnelly Aff. ¶¶ 10, 20.

THE COMPLAINT

One of Ms. Pridemore's primary opponents is Bob Barr whose campaign, Barr Congress, Inc., filed the Complaint. Donnelly Aff. ¶¶ 4-5. The Complaint states that Barr Congress, Inc. included three fictitious or "salted" contributor names and addresses on its July Quarterly FEC Form 3 disclosure report to detect unauthorized use of contributor information in violation of the Act. Complaint at 1. Exhibit A of the Complaint indicates that the fictitious contributor names and addresses were:

The Complaint claims that Barr Congress, Inc. received the November 2, 2013 solicitation mailing sent to [redacted] at the above-listed fictitious address. Complaint 1-2. The Complaint concludes that PFC must have identified [redacted] as a potential contributor based on the Barr Congress, Inc. disclosure reports because [redacted] identity "was only disclosed to the public through Barr Congress' FEC disclosure reports." Complaint at 2. Accordingly, the Complaint

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alleges that PFC violated the Act by using a Barr Congress, Inc. disclosure report to impermissibly identify one individual – – from whom to solicit a contribution. Complaint at 1-2.

The Complaint does not allege that PFC sent the solicitation mailing to the other fictitious contributors listed on Barr Congress, Inc.'s disclosure report and confirms that Barr Congress, Inc. is not "aware of any communications by [PFC] to other Barr Congress 'salted' contributors." Complaint at 2.

THE ACT, IMPLEMENTING REGULATIONS, AND COMMISSION PRECEDENT

The Commission shall "within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection ... except that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes.... A political committee may submit 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record." 2 U.S.C. 438(a)(4); *see also* 11 C.F.R. 104.15.

The Commission consistently dismisses complaints at the threshold when a respondent demonstrates that use of contributor information did not violate the Act, but more often because the allegations contained in the complaint are de minimis in nature. In FEC MUR 5953, the respondents acknowledged using contributor information filed by the campaign of a Member of Congress to contact contributors and ask them to encourage the Member of Congress to vote a certain way on upcoming legislation. *See* FEC MUR 5953 (Andrews), General Counsel's Report at 2 (Jan. 16, 2008). Respondents argued that this did not violate the Act and the Office of General Counsel appears to have agreed. *See id.* Nonetheless, the Commission's articulated basis for dismissing the matter at the threshold – as recommended by the Complaints Examination & Legal Administration staff responsible for initial complaint processing – was based on "the apparent de minimis nature of the allegations." *See id.*; Certification (Aug. 18, 2008).

In FEC MUR 5990, the campaign of a candidate for an open congressional seat explained that it had sent a contribution solicitation mailing to 1,093 individuals, but

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acknowledged using the disclosure reports of the campaign of the retiring incumbent to identify and send the mailing to 984 of those individuals. *See* FEC MUR 5990 (Citizens for Matt Shaner), General Counsel's Report at 2 (Feb. 13, 2009). The campaign stated that the total cost of the mailing was \$2,012, the proportionate amount attributed to those 984 names was \$1,811, and no contributions resulted from the mailing. *Id.* Again, the Commission accepted the Office and General Counsel's recommendation – through the Complaints Examination & Legal Administration staff – to dismiss the matter at the threshold based on “the *de minimis* cost of the mailings at issue and the fact that no funds were received as a result of the solicitations.” *See id.*; FEC MUR 5990, Certification (Mar. 12, 2009).

DISCUSSION

Contrary to the allegations made in the Complaint, PFC did not solicit a fictitious contributor to Barr Congress, Inc., but an active supporter and contributor to PFC. Accordingly, the Commission should find no reason to believe PFC violated the Act.

is a politically active individual who became acquainted with PFC as early June 12, 2013. Donnelly Aff. ¶¶ 17-19. He was a committed participant and contributor to PFC both before and after PFC sent its November 2, 2013 solicitation mailing. Donnelly Aff. ¶¶ 18-19. Like other supporters and contributors, would have been included in the mailing based on this clear and direct connection to PFC. Donnelly Aff. ¶ 20. Accordingly, the Complaint's claim that PFC solicited a fictitious individual otherwise unknown to PFC is simply wrong.

Furthermore, PFC denies that it would have solicited individuals who previously contributed to Barr Congress, Inc. because those individuals would be predisposed against contributing to a direct rival like PFC. Donnelly Aff. ¶ 21.² PFC's denial is borne out by the Complaint itself. If it were the practice of PFC to solicit a rival campaign's contributors, surely PFC would have sent the November 2, 2013

² This stands in contrast to the situation in MUR 5990 where the campaign of a candidate running for an open congressional seat copied contributor names from the campaign disclosures of a retiring incumbent who was not, therefore, a direct rival. Nonetheless, the Commission dismissed the MUR. *See* FEC MUR 5990 (Citizens for Matt Shaner), Certification (Mar. 12, 2009).

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solicitation mailing to the other supposedly fictitious contributors included in the Barr Congress, Inc. disclosures: But the Complaint confirms this did not occur. Complaint at 2.

Finally, the Complaint should be dismissed based on the de minimis nature of its allegation which, at most, is that PFC sent the November 2, 2013 solicitation mailing to but at the fictitious address included in the Barr Congress, Inc. disclosures. This is clearly far less significant than the alleged violations in MUR 5953 and MUR 5990 where contributor information from campaign disclosures of as many as 984 individuals was used. In addition, and like the situations in MUR 5953 and MUR 5990, a solicitation of sent to a fictitious address would not have resulted in the receipt of any contributions. Lastly, the entire amount spent by PFC on its November 2, 2013 mailing was \$984.15 and only an infinitesimally small portion of that could have been attributed to a solicitation of at the fictitious address. Donnelly Aff. ¶ 13. In contrast, the entire mailing in MUR 5990 cost \$2,012 and the amount attributed to the individuals that were alleged to have been improperly solicited was \$1,811.³ Both MUR 5953 and MUR 5990 were dismissed based on the de minimis level of activity alleged in those matters. This Complaint's allegation is far less significant and, therefore, should also be dismissed as de minimis.

CONCLUSION

The Complaint in this matter was predicated on Barr Congress, Inc.'s mistaken belief that it had included a fictitious contributor named in its disclosures to the FEC and that PFC used that information to identify a potential contributor for its November 2, 2013 solicitation mailing. is not a fiction, but an active contributor and supporter of PFC. Accordingly, the Commission should find no reason to believe that PFC and its Treasurer violated the

³ PFC cannot confirm whether the fictitious address for was used for the November 2, 2013 mailing and, if it was, how the address would have been incorporated into the mailing despite the fact that PFC already possessed the correct address for Donnelly Aff. ¶¶ 15, 20.



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Act. Furthermore, the one isolated incident alleged in the Complaint to have possibly violated the Act is so de minimis that Commission precedent compels dismissal at the threshold.

Sincerely,

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Caleb P. Burns

Enclosure